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SERVICE DATE - JANUARY 29, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-20941

GROENDYKE TRANSPORT, INC., MANFREDI MOTOR TRANSIT CO., MILLER
TRANSPORTERS, INC., SUPERIOR CARRIERS, INCORPORATED, AND TRIMAC
TRANSPORTATION, INC. — POOLING AGREEMENT

AGENCY: Surface Transportation Board.

ACTION: Request for comments from interest parties and order of suspension.

SUMMARY: Pursuant to 49 U.S.C. 14302(c)(3), we are (1) requesting public comments on an application filed by nine motor carriers of bulk commodities to pool some of their services, traffic, and revenues and (2) suspending operation of the pooling agreement pending a final decision on the application.

DATES: Comments must be filed by March 1, 1999. Applicant's reply to the comments is due by March 22, 1999.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC-F-20941 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, send one copy of comments to applicants' representative: James A. Calderwood, Zuckert, Scoutt & Rasenberger, 888 17th Street, N.W., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1609.
[TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: By application filed on November 20, 1998, nine motor carriers¹ seek authority to pool some of their services, traffic, and revenues pursuant to 49 U.S.C. 14302 and our regulations to implement this provision at 49 CFR 1184. The carriers are all licensed by the United States Department of Transportation (DOT) to carry bulk commodities that are often classified as "hazardous materials" by DOT. In general, the bulk commodities transported

¹ The nine motor carriers are: Groendyke Transport, Inc.; Manfredi Motor Transit Co.; Miller Transporters, Inc.; Superior Carriers, Inc., and Central Transport, Inc., both wholly owned subsidiaries of Superior Carriers, Incorporated, a noncarrier; and Liquid Transporters, Inc., Quality Services Tanklines, Inc., Trimac Transportation Services (Western), Inc., and Universal Transport, Inc., all four of which are wholly owned subsidiaries of Trimac Transportation, Inc., a noncarrier.

by applicants are chemical products that cannot be mixed with other cargo in the same load and require specialized equipment and handling procedures. The equipment must usually be cleaned after each delivery.

By their pooling agreement, applicants plan to establish a “joint venture corporation” (JVC) that will (1) coordinate their operations so as to avoid traffic imbalances and empty mileage and (2) share and coordinate their acquisition, use, and cleaning of the specialized cleaning equipment required for their operations. The pooling agreement has no expiration date. Each of the five owners of the JVC will have a 20% equity interest in it, and representation on the JVC’s Board of Directors will be equal among the five owners.² Each of the five owners will make an initial contribution to the JVC to cover expenses associated with its formation and initial operations. The JVC’s board will hire its own staff.

The operations of the JVC can be summarized in their essential aspects as follows:

1. Load Balancing. Each carrier will regularly notify the JVC about the points where it will have empty equipment or need loads and the points where it cannot handle the loads offered to it. The JVC will endeavor to reconcile available equipment with needs “in a fair and equitable manner.” Not less than monthly, the JVC will report to its carrier members as to “the number of loads transported under the joint venture corporation arrangement along with the volumes and points served.”

2. Cleaning equipment. The carrier members will assist each other in the provision of cleaning equipment, make cleaning facilities available on an equal basis, establish procedures for the use and cleaning of such equipment, and share information and compile records concerning such use. In addition, “[m]ember carriers owning or controlling particular cleaning facilities will be responsible for the safe and efficient operation of such facilities”

3. Funding. The JVC may establish charges to its member carriers to fund its operations.

4. Participation. A carrier member may terminate its participation by giving 30 days notice, subject to fulfillment of its prior obligations, and, if its permit is revoked by DOT, its operational participation will be automatically suspended.

5. Shippers. The carriers certify that the rates set under the agreement do not contravene the restrictions on collective ratemaking in 49 U.S.C. Subtitle IV and our regulations.³ Each carrier

² The parent owners will act on behalf of their subsidiary regulated carriers: see n.1 herein.

³ The last sentence of numbered paragraph 7 of the pooling agreement provides: “The joint venture corporation will establish a uniform rate structure applicable to transportation services
(continued...) ”

member will deal separately with shippers as to rates, contracts, and service. Rates will not be set by the JVC or its staff and will not be subject to discussion or agreements between JVC members.

Under the pooling agreement, carriers will sometimes have to collect charges from their customers for services that will actually be performed by other carriers. The particular carrier member responsible for contractual arrangements with a particular shipper will collect charges from the shipper and compensate the carriers that actually perform the services. The JVC will facilitate such compensation, acting as a clearinghouse and record keeper.

On January 7, 1999, Schneider National Bulk Carriers, Inc. (Schneider) filed a letter reply in opposition to the agreement, urging us to set the matter for hearing. Schneider asserts that the agreement is too vague; that it would unduly concentrate the market; that it would allow the participants to function as a de facto rate bureau; that it would permit improper “signals” of price movements; that uniform equipment costs could improperly influence carrier rates; and that the agreement would improperly allow division of the market. Interested persons may obtain a copy of Schneider’s letter reply by contacting counsel for Schneider, Mr. Stephen M. Ferris, Esq., who may be reached at (920) 592-3896.

On January 15, 1999, Liquid Transport Corporation (LTC) filed a petition urging us to reject the agreement or to request comments from the public. LTC asserts that the proposal, which it concludes is not a pooling agreement but is instead a “Return Loads Bureau” and equipment cleaning service, is of major transportation importance because it will adversely affect the ability of other carriers to compete for this traffic; that the proposal will restrain competition and effectively constitute collective ratemaking; and that any benefits it may produce will not justify the harm it will cause. Interested persons may obtain a copy of LTC’s petition by contacting counsel for LTC, Mr. Terry G. Fewell, Esq., who may be reached at (317) 637-1777.

Under 49 U.S.C. 14302(c)(2), the Board must determine whether the proposed pool is of major transportation importance and whether there is a substantial likelihood that the agreement will unduly restrain competition. If we determine that neither of these two factors exists, we are required to approve the agreement without a hearing. Before we attempt to make those determinations, we will seek public comments on the application and on the issues raised by Schneider and LTC.

So that we may issue a final decision on the application after the comments are analyzed, commenters should also address whether, even if the agreement is of major transportation importance or there is a substantial likelihood that the agreement will unduly restrain competition,

³(...continued)

rendered through the joint venture corporation.” We presume that this provision concerns payment for services that the carriers will render to each other and would not allow the JVC to provide regulated transportation services to be billed to shippers. Applicants should notify us if we are incorrect in this presumption.

the agreement should nevertheless be approved under 49 U.S.C. 14302(c)(3) because it would foster better service to the public or operational economies.

Because the applicant carriers bear the burden of proof, we will allow them to respond to the public comments.

Under 49 U.S.C. 14302(c)(3), we are required to suspend operation of the proposed agreement pending a final decision, and we hereby do so.

Board decisions and notices are available at our website at “WWW.STB.DOT.GOV.”

This notice and order will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A hearing on the pooling application is commenced as described in this notice.
2. Effective on the date of publication, the operation of the proposed pooling agreement is suspended pending completion of this hearing and issuance of a final decision.
3. A copy of this notice will be served on the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: January 25, 1999.

By the Board, Chairman Morgan and Vice Chairman Clyburn.

Vernon A. Williams
Secretary